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12:41:15 1 anything like that, we'll cancel it.

12:41:19 2 **Q.** Okay. Are there any other circumstances
12:41:24 3 where you would cancel an ambulance?

12:41:27 4 **A.** That's pretty much it.

12:41:28 5 **Q.** Okay. So you would never cancel an
12:41:31 6 ambulance because you believed that you could get
12:41:33 7 the individual to ECMC quicker?

12:41:35 8 **A.** I would not cancel ADI for that.
12:41:38 9 That's their job, so I'd rather them take them to
12:41:41 10 the hospital.

12:41:42 11 But I mean, for -- from my experience, the
12:41:45 12 only time I cancel ADI is when they don't want it,
12:41:51 13 when they refuse to go to the hospital because they
12:41:53 14 don't seem like they don't need it.

12:41:56 15 **Q.** Okay. So when you say "they," you're
12:41:58 16 referring to --

12:41:59 17 **A.** I'm referring to injured parties.
12:42:03 18 Yeah, that's what I'm referring to.

12:42:05 19 **Q.** Okay. Is that something that officers
12:42:10 20 are trained on, when to cancel ADI?

12:42:14 21 **A.** No, there's no -- to my recollection,
12:42:19 22 there's no training with regards to when to cancel
12:42:22 23 ADI.

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12:42:23 1 I do it just so that if the ambulance does
12:42:26 2 respond and that injured person doesn't require
12:42:29 3 them, I want that ambulance to go back in service
12:42:31 4 so they can serve someone else. That's why I do
12:42:34 5 it, but that's just me.

12:42:37 6 Q. Have you ever received training that
12:42:39 7 says anywhere in that training to cancel ADI if an
12:42:42 8 officer feels that they can get the injured party
12:42:45 9 to the hospital quicker?

12:42:46 10 MS. HUGGINS: Form.

12:42:46 11 THE WITNESS: I can't -- I can't recall.

12:42:47 12 BY MR. DAVENPORT:

12:42:48 13 Q. All right. Do you know if there's any
12:42:50 14 training that says that an officer should not
12:42:52 15 cancel ADI just because they believe that they can
12:42:55 16 get the individual to the hospital quicker?

12:42:56 17 A. I am not sure.

12:43:01 18 Q. But as you sit here today, you do not
12:43:05 19 recall being told one way or the other whether to
12:43:08 20 cancel --

12:43:10 21 A. Yes, I don't recall ever being trained
12:43:11 22 on how to cancel or when to cancel the ambulance.
12:43:14 23 This is just going on my own experience.

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12:43:16 1 **Q.** Okay. Are you aware of officers who
12:43:26 2 cancel ambulances because they believe that they
12:43:29 3 can get the injured party to the hospital quicker?

12:43:31 4 **MS. HUGGINS:** Form. You can answer.

12:43:32 5 **THE WITNESS:** I've been aware of certain
12:43:35 6 situations of a life-and-death situation where it
12:43:40 7 was best that they transported that individual.

12:43:44 8 **BY MR. DAVENPORT:**

12:43:44 9 **Q.** Is that something that happens
12:43:46 10 routinely or is that --

12:43:48 11 **A.** No, it's just you can't control that.
12:43:50 12 I mean, it just happens, so you just have to use
12:43:52 13 your judgment.

12:43:53 14 **Q.** Okay. So it's rare that those officers
12:43:57 15 are faced with those types of situations?

12:44:00 16 **A.** It is a rare event, yes.

12:44:02 17 **Q.** And that's generally only in
12:44:04 18 life-and-death situations that you've heard of
12:44:06 19 officers canceling ambulances to drive the
12:44:09 20 individual to ECMC?

12:44:10 21 **MS. HUGGINS:** Form.

12:44:10 22 **THE WITNESS:** Well, it's not pretty much
12:44:13 23 canceling, it's just putting that individual and

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12:44:15 1 transporting them to the hospital.

12:44:17 2 But yes, there's been circumstances where in
12:44:20 3 regards to that person's life-or-death situation
12:44:23 4 that they've transported them to the hospital, yes.

12:44:25 5 **BY MR. DAVENPORT:**

12:44:25 6 **Q.** Okay. Are you aware of any other times
12:44:28 7 when an officer has canceled an ambulance besides
12:44:32 8 life-and-death situation for the injured party?

12:44:35 9 **A.** Like I mentioned earlier in regards to
12:44:37 10 accidents, it's pretty much that injured person
12:44:39 11 whether or not they want to be seen or taken to the
12:44:41 12 hospital. It's up to them.

12:44:43 13 **Q.** So besides life-and-death situations
12:44:46 14 and instances where the injured party says that
12:44:48 15 they do not want to go to a hospital by an
12:44:52 16 ambulance, are you aware of any other circumstances
12:44:54 17 where officers canceled ambulances for an injured
12:44:57 18 party?

12:44:57 19 **MS. HUGGINS:** Form.

12:44:57 20 **THE WITNESS:** No. No, I can't speak to --
12:45:01 21 in regards to other officers. I'm just saying in
12:45:03 22 regards to myself, and what I've been through.

12:45:06 23 **BY MR. DAVENPORT:**

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12:45:06 1 **Q.** But also for yourself, have you heard
12:45:08 2 of any other circumstances or instances where an
12:45:11 3 officer has canceled an ambulance besides
12:45:14 4 life-and-death situations and instances where an
12:45:16 5 injured party has refused an ambulance?

12:45:20 6 **A.** No.

12:45:20 7 **MS. HUGGINS:** Form.

12:45:20 8 **THE WITNESS:** No.

12:45:22 9 **BY MR. DAVENPORT:**

12:45:22 10 **Q.** Okay. Are you aware that the officers
12:45:29 11 on the scene canceled the ambulance for this
12:45:32 12 incident?

12:45:33 13 **A.** No, I was not aware.

12:45:35 14 **Q.** Is this the first time, me telling you
12:45:38 15 that that happened?

12:45:38 16 **A.** I'm not aware because I don't recall.

12:45:41 17 **Q.** Before this deposition today, were you
12:45:44 18 aware that the officers canceled the ambulance to
12:45:50 19 arrive at 33 Schmarbeck?

12:45:51 20 **A.** No.

12:45:51 21 **Q.** So this is the first time that you are
12:45:53 22 learning of that?

12:45:54 23 **A.** Yes.

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12:45:54 1 Q. What's your opinion of those
12:45:56 2 officers -- strike that.

12:46:02 3 A. I don't -- I'm not going to --

12:46:04 4 MS. HUGGINS: No, no.

12:46:05 5 MR. DAVENPORT: That's okay.

12:46:05 6 MS. HUGGINS: Yeah, he didn't complete his
12:46:11 7 question.

12:46:14 8 BY MR. DAVENPORT:

12:46:14 9 Q. Is that something that you would expect
12:46:15 10 for a male getting hit by a car, if that male did
12:46:18 11 not request to have the ambulance canceled that
12:46:22 12 that ambulance would actually still be canceled?

12:46:24 13 MS. HUGGINS: Form. That calls for
12:46:25 14 speculation.

12:46:27 15 THE WITNESS: If I dealt with the situation
12:46:30 16 where someone that was hit by a car and they told
12:46:32 17 me that they didn't require the ambulance, then I'm
12:46:35 18 going to respect their wishes and cancel the
12:46:38 19 ambulance.

12:46:40 20 BY MR. DAVENPORT:

12:46:40 21 Q. But if the individual didn't say that
12:46:42 22 they wanted to have the ambulance canceled, you
12:46:45 23 would not cancel the ambulance?

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12:46:48 1 **MS. HUGGINS:** Form.

12:46:49 2 **THE WITNESS:** Well, I will not, no and
12:46:51 3 that's their wishes. If they want to be
12:46:53 4 transported, they can be transported.

12:46:54 5 **BY MR. DAVENPORT:**

12:46:55 6 **Q.** Okay. So we've heard testimony before
12:46:57 7 from Officer Schultz that his reason -- that he
12:47:02 8 canceled the ambulance, but this is the first time
12:47:05 9 that you learned of that. Correct?

12:47:06 10 **A.** That's correct.

12:47:08 11 **Q.** And Officer Schultz testified that the
12:47:12 12 reason why he canceled the ambulance was because he
12:47:15 13 believed that he could get the pedestrian to -- the
12:47:19 14 injured party to the hospital quicker than an
12:47:21 15 ambulance would.

12:47:22 16 **A.** Okay.

12:47:23 17 **Q.** Okay. Now, in looking at the complaint
12:47:30 18 summary report, what is the time between the time
12:47:34 19 stamp 10:55:42, male hit by police car, and the
12:47:38 20 time that the location was changed to ECMC?

12:47:43 21 **A.** 11:22:34 for the first.

12:47:48 22 **Q.** Okay. So would it be safe to assume
12:47:53 23 that it was approximately a half an hour before

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12:47:56 1 that individual was transported to the ECMC?

12:48:00 2 **A.** No, 28 minutes.

12:48:03 3 **Q.** But it was approximately a half an
12:48:05 4 hour?

12:48:06 5 **A.** It wasn't a half-hour according to the
12:48:08 6 document right here.

12:48:09 7 **Q.** 28 minutes is roughly close to 30
12:48:12 8 minutes.

12:48:12 9 **A.** Yeah, but it's not a half-hour.

12:48:14 10 **Q.** Would you be more comfortable if I said
12:48:17 11 28 minutes?

12:48:18 12 **A.** According this documentation, yes, that
12:48:19 13 is correct.

12:48:19 14 **Q.** Okay. So 28 minutes was the time that
12:48:23 15 elapsed between a male being hit by the car and the
12:48:26 16 officer's transporting the individual to ECMC?

12:48:28 17 **A.** Yes, according to this document in
12:48:30 18 front of me.

12:48:30 19 **Q.** Okay. How long does it take an
12:48:32 20 ambulance to arrive at a scene after they are
12:48:34 21 notified?

12:48:35 22 **A.** I cannot give you the times on when
12:48:37 23 they respond on scenes. It could be minutes and

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12:48:40 1 they could call back and say it's going to take
12:48:43 2 some time, so I don't know. It depends on how busy
12:48:46 3 they are.

12:48:47 4 **Q.** Do you know how long it takes to drive
12:48:54 5 from 33 Schmarbeck to ECMC roughly?

12:48:58 6 **A.** It also depends on various -- it -- it
12:49:03 7 could be heavy traffic. Heavy traffic could be
12:49:05 8 over 20 minutes; light traffic probably 10, 15
12:49:09 9 minutes. It all depends on really how many cars
12:49:13 10 are on the road.

12:49:14 11 **Q.** What about lights and sirens?

12:49:16 12 **MS. HUGGINS:** Form.

12:49:17 13 **THE WITNESS:** It's depending on traffic,
12:49:19 14 too, because even if you do have your lights and
12:49:22 15 sirens, you have to like find your way around it,
12:49:25 16 but I could say 10 minutes, maybe.

12:49:29 17 **BY MR. DAVENPORT:**

12:49:29 18 **Q.** So maybe 10 minutes with lights and
12:49:31 19 sirens?

12:49:31 20 **A.** Yeah, but that's not even -- that's a
12:49:33 21 residential area and you're not like going like
12:49:36 22 super-fast because there's people all around that.
12:49:39 23 So you have to be -- you're going fast but you're

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12:49:41 1 not going so fast because of the pedestrians that
12:49:45 2 are all over the streets.

12:49:47 3 **Q.** Is there a general speed that officers
12:49:49 4 are expected to not surpass when they're driving
12:49:53 5 through residential areas?

12:49:54 6 **MS. HUGGINS:** Form.

12:49:55 7 **THE WITNESS:** Generally, and this is from my
12:49:57 8 point of view, while at patrol, I follow the rules
12:50:01 9 of the road.

12:50:02 10 I don't know if you want to expand that to
12:50:05 11 when I respond to a priority call, which -- which
12:50:07 12 is like a -- it could be a rescue, it could be a
12:50:14 13 burglary in progress.

12:50:16 14 I'm not pushing over 60 because, like I
12:50:18 15 said, I'm watching out for pedestrians. I'm going
12:50:20 16 with haste but I'm also going -- like safety is my
12:50:25 17 number one priority when I'm responding to calls.

12:50:28 18 **BY MR. DAVENPORT:**

12:50:28 19 **Q.** When you're not responding to a
12:50:29 20 high-priority call, what general speed are you
12:50:32 21 driving through residential areas?

12:50:34 22 **MS. HUGGINS:** Form.

12:50:36 23 **THE WITNESS:** 25, 30. Within 20, 30. But

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12:50:44 1 if I'm like on Broadway, the main intersection, I'm
12:50:47 2 going 30, 35, but if I'm driving the streets, kind
12:50:51 3 of like between 20 and 30 miles an hour.

12:50:53 4 **BY MR. DAVENPORT:**

12:50:54 5 **Q.** Okay. Besides the speed limit, are
12:50:56 6 there other vehicle and traffic laws that you abide
12:51:01 7 by?

12:51:01 8 **A.** Everything.

12:51:03 9 **Q.** Does that include wearing a seatbelt?

12:51:04 10 **A.** Oh, yeah, absolutely.

12:51:06 11 **Q.** All right. Does that include checking
12:51:08 12 your mirrors?

12:51:09 13 **A.** Every morning, I check my entire patrol
12:51:12 14 vehicle to make sure that it's functioning.

12:51:15 15 **Q.** Okay. Do officers ever face discipline
12:51:24 16 for driving too fast through residential areas?

12:51:27 17 **MS. HUGGINS:** Form.

12:51:27 18 **THE WITNESS:** I've never heard of anything,
12:51:32 19 so I can't really answer that question.

12:51:33 20 **BY MR. DAVENPORT:**

12:51:35 21 **Q.** Do officers ever face discipline for
12:51:38 22 not wearing a seatbelt?

12:51:39 23 **A.** Again, I've never heard of anything

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12:51:42 1 from my point of view, so I can't really answer
12:51:45 2 that. But I've never heard of anything, no.

12:51:47 3 **Q.** Do you receive training on how to drive
12:51:49 4 a vehicle?

12:51:51 5 **A.** The only training that we receive is
12:51:54 6 during the academy. And that's all -- that's all
12:51:59 7 the training I received in regards to driving.

12:52:03 8 **Q.** So that would have been through your
12:52:05 9 first initial six months of training?

12:52:07 10 **A.** Yes.

12:52:08 11 **Q.** And what kind of things are they
12:52:12 12 teaching you about vehicle and traffic safety
12:52:14 13 during those initial classes?

12:52:16 14 **A.** In a vehicle, it's driving the patrol
12:52:20 15 car at a high rate of speed. Stopping. Driving
12:52:24 16 backwards. Yeah, that's all I can remember in
12:52:29 17 regards to that.

12:52:31 18 **Q.** With regard to driving backwards, what
12:52:36 19 specifically do they train you on?

12:52:39 20 **A.** As far as I know, driving backwards,
12:52:42 21 when I did it, it was pretty much like going over
12:52:47 22 30 miles an hour and pretty much just driving, just
12:52:50 23 driving backwards and positioning yourself when you

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12:52:54 1 do drive backwards to be like within certain cones
12:52:58 2 or whatever. But that was a long time ago, but
12:53:01 3 that's pretty much all I remember in regards to
12:53:03 4 that.

12:53:04 5 Q. Do they do anything -- do they do any
12:53:07 6 training for driving backwards and then pulling
12:53:10 7 forwards?

12:53:10 8 A. During that training, yes. Not only do
12:53:12 9 you drive backwards, I mean, it's turning the
12:53:15 10 vehicle over and there's an obstacle that you have
12:53:18 11 to avoid like at certain points.

12:53:20 12 And you have to like make a split-second
12:53:21 13 decision whether you need to take a right or a
12:53:24 14 left. Yeah, that's pretty much all I could -- I
12:53:27 15 could remember.

12:53:28 16 Q. Is there somebody who was in the car
12:53:30 17 with you during this training?

12:53:32 18 A. Yes. There's an instructor with you.

12:53:35 19 Q. All right. And how long during this
12:53:38 20 training are you actually driving for?

12:53:41 21 A. We were there the entire day, so we
12:53:44 22 were driving that whole day. I don't know what day
12:53:48 23 it was, but I do remember it was a whole day that

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12:53:51 1 we were there training in vehicles.

12:53:53 2 Q. Okay. As part of that day, were you
12:53:56 3 also doing some in-class instruction?

12:53:59 4 A. No. I don't recall back then when we
12:54:03 5 did classrooms, no.

12:54:05 6 Q. Okay.

12:54:08 7 MR. DAVENPORT: I'm sorry, could we go off
12:54:09 8 the record really quick?

12:55:16 9 (Discussion off the record.)

12:55:16 10 BY MR. DAVENPORT:

12:55:26 11 Q. Now, sticking with Exhibit 4-A, do you
12:55:30 12 see at 11:30:35, it says that the suspect broke the
12:55:35 13 mirror on car 473 intentionally?

12:55:38 14 A. I do see that.

12:55:39 15 Q. Okay. And what does that tell you when
12:55:45 16 you read that?

12:55:47 17 A. That the suspect broke the mirror
12:55:49 18 intentionally, with intent.

12:55:52 19 Q. Okay. Do you see at 11:07:31 where it
12:56:01 20 says cameras have -- on 37 has video of the man
12:56:06 21 flopping on the ground?

12:56:07 22 A. I do see that.

12:56:09 23 Q. And what does that tell you?

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12:56:10 1 **A.** The cameras on 37 has a video of the
12:56:13 2 man flopping on the ground, so some man flopping on
12:56:17 3 the ground.

12:56:18 4 **Q.** Okay. Would that tell you that the
12:56:21 5 suspect was flopping on the ground?

12:56:24 6 **A.** No, it just says a man flopping on the
12:56:26 7 ground, so it doesn't specify who.

12:56:29 8 **Q.** Okay. So I'm going to show you what's
12:56:32 9 been previously marked as Exhibit 11. And it is
12:56:39 10 video number 06_20170101102529. I'm just going to
12:56:52 11 rewind it so you can see the beginning. So I would
12:56:55 12 just like you to watch this video.

12:58:18 13 Now, at this portion of the video segment,
12:58:20 14 we are a minute and 13 seconds into the video clip.
12:58:26 15 Do you agree that the individual has been taken
12:58:30 16 into custody or detained at this time?

12:58:32 17 **MS. HUGGINS:** Form. You can answer.

12:58:33 18 **THE WITNESS:** All I can see is that there's
12:58:35 19 officers on either side of him, but I don't know
12:58:38 20 whether or not he's in custody because of the
12:58:40 21 quality of this video.

12:58:41 22 **BY MR. DAVENPORT:**

12:58:41 23 **Q.** Okay. Is the individual standing at

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12:58:43 1 this time?

12:58:44 2 **A.** Yes, he is.

12:58:45 3 **Q.** Okay. At any point before that man was
12:58:49 4 standing, did you see him flopping around on the
12:58:51 5 ground?

12:58:52 6 **A.** No, I did not.

12:58:54 7 **Q.** Okay. So I'm going to play that exact
12:59:08 8 segment again and I just want you to generally
12:59:10 9 describe what you see in the video.

12:59:17 10 **A.** The patrol vehicle is driving away
12:59:22 11 initially, so he's walking towards the other one as
12:59:25 12 the patrol vehicle is pulling out. And that's when
12:59:29 13 vehicle and person collide with each other.

12:59:33 14 **Q.** Okay.

12:59:34 15 **MS. HUGGINS:** Form. The exhibit speaks for
12:59:36 16 itself.

12:59:37 17 **BY MR. DAVENPORT:**

12:59:38 18 **Q.** What do you see right here?

12:59:40 19 **A.** I don't know who that individual is
12:59:41 20 walking up there. I see two officers approaching
12:59:46 21 the vehicle and someone exiting the patrol vehicle.

12:59:50 22 The person who is not on officer is walking
12:59:53 23 back towards the sidewalk and now I see three

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12:59:57 1 officers on the driver's side door.

13:00:00 2 **MS. HUGGINS:** Form to the last question.

13:00:02 3 **BY MR. DAVENPORT:**

13:00:03 4 **Q.** Now, at any point for that individual
13:00:07 5 who is not an officer who appeared on the screen,
13:00:09 6 did he do anything that was threatening to the
13:00:11 7 officers?

13:00:12 8 **MS. HUGGINS:** Form.

13:00:13 9 **THE WITNESS:** I can't see anything because
13:00:14 10 the view is obstructed by the truck itself.

13:00:19 11 **BY MR. DAVENPORT:**

13:00:19 12 **Q.** Besides the part that was obstructed by
13:00:21 13 the truck, did you see that individual do anything
13:00:23 14 threatening to the officers?

13:00:25 15 **MS. HUGGINS:** Form.

13:00:26 16 **THE WITNESS:** The quality of this video, you
13:00:27 17 can't see anything.

13:00:29 18 **BY MR. DAVENPORT:**

13:00:30 19 **Q.** Well, I mean, you can see something on
13:00:31 20 the video, right?

13:00:32 21 **A.** I can't see him on that video. All I
13:00:35 22 can see is the officers standing around him. I
13:00:37 23 didn't see anything else because the view is

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13:00:39 1 obstructed by the truck.

13:00:42 2 He was obstructed by the truck. The
13:00:43 3 officers were around the truck. That's all I saw.

13:00:46 4 **Q.** Did you see the portion where he was
13:00:48 5 standing out in the middle of the street?

13:00:51 6 **A.** Before he got with the vehicle? Yes, I
13:00:54 7 seen that before, but you're asking me in regards
13:00:57 8 to if I seen an incident with the officers.

13:00:59 9 And I'm telling you no because the -- the
13:01:03 10 view is obstructed by the truck so you can't see
13:01:05 11 anything. All I can see is two officers on the
13:01:07 12 driver's side of that vehicle. That's it.

13:01:10 13 **Q.** When he was standing or walking in the
13:01:13 14 middle of the street, was he doing anything
13:01:15 15 threatening to the officers?

13:01:17 16 **MS. HUGGINS:** Form.

13:01:18 17 **THE WITNESS:** No.

13:01:18 18 **BY MR. DAVENPORT:**

13:01:19 19 **Q.** Okay. Based on what you saw on that
13:01:21 20 video?

13:01:21 21 **A.** Based on what I saw on that
13:01:25 22 grainy-quality video, yes.

13:01:26 23 **Q.** Okay. Now, as an officer, do you ever

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13:01:31 1 use surveillance footage when you're at a crime
13:01:34 2 scene?

13:01:35 3 **A.** If that individual has footage, yes.

13:01:42 4 If the owner has access to it, I will view it, but
13:01:45 5 it's pertaining on a particular crime.

13:01:48 6 You would have to like specify what type of
13:01:51 7 view you want me to talk about, but yes, I have
13:01:54 8 used surveillance videos in the past.

13:01:57 9 **Q.** Okay. Have you ever let's say gone to
13:02:00 10 a gas station to respond to a potential crime and
13:02:03 11 the gas station owner has surveillance cameras that
13:02:06 12 are set up?

13:02:07 13 **A.** Yes.

13:02:08 14 **Q.** Okay. And how would you say the
13:02:11 15 quality of those videos compares to this video?

13:02:14 16 **MS. HUGGINS:** Form.

13:02:16 17 **THE WITNESS:** Gas stations, some of them, I
13:02:18 18 mean, they're not really good quality and others,
13:02:21 19 they're really fine quality, so.

13:02:24 20 I mean, it depends on whether or not they
13:02:27 21 want to spend money on a top-notch security system.
13:02:30 22 I mean, I've seen some that are really good quality
13:02:33 23 and I've seen a lot that are not that great.

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13:02:35 1 **BY MR. DAVENPORT:**

13:02:36 2 **Q.** Okay. Do you ever watch the
13:02:40 3 surveillance footage with the gas station owner?

13:02:42 4 **A.** Yes, I have, actually.

13:02:43 5 **Q.** Okay. Have you watched surveillance
13:02:45 6 footage with a gas station owner who has a
13:02:48 7 lower-quality surveillance camera?

13:02:50 8 **A.** I have.

13:02:51 9 **MS. HUGGINS:** Form.

13:02:51 10 **BY MR. DAVENPORT:**

13:02:51 11 **Q.** And when you're watching that
13:02:53 12 surveillance footage, do you typically tell the gas
13:02:57 13 station owner that they're low-quality grainy video
13:02:59 14 that can't -- you can't see anything that's
13:03:01 15 happening in the video?

13:03:02 16 **MS. HUGGINS:** Form.

13:03:02 17 **THE WITNESS:** If it's something that's
13:03:04 18 not -- if it's a video that doesn't have that much
13:03:06 19 clarity, that's something that I can't use because
13:03:09 20 I'm going to need something that actually has a
13:03:10 21 specific item on that person.

13:03:11 22 So if he shows me a video of someone grainy
13:03:15 23 and stuff like that, that's nothing I can go

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13:03:17 1 forward with.

13:03:17 2 Maybe if that video shows a -- like a
13:03:19 3 colored shirt or something like that, that's
13:03:20 4 something to go on.

13:03:21 5 And then for like be on the lookout for this
13:03:27 6 individual, if it's something that's low quality,
13:03:28 7 to me, it's not that reliable because it's -- it's
13:03:31 8 low quality. It's not that good.

13:03:33 9 **BY MR. DAVENPORT:**

13:03:33 10 **Q.** But you still watch it and you try to
13:03:35 11 decipher as much as you can from that video, you
13:03:38 12 don't just blanketly say that it's low-quality
13:03:41 13 grainy video. Correct?

13:03:43 14 **A.** Yeah, I --

13:03:43 15 **MS. HUGGINS:** Form.

13:03:44 16 **THE WITNESS:** -- do. I still watch it. I
13:03:45 17 mean, you can pretty much put everything in place,
13:03:48 18 but in regards to like a situation that you're
13:03:50 19 trying to get me to explain in regards to an
13:03:53 20 incident with him and the officers, I don't see
13:03:55 21 anything because it's obstructed by that truck.

13:03:57 22 **BY MR. DAVENPORT:**

13:03:57 23 **Q.** Right.

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13:03:58 1 **A.** So I can't see whether or not there was
13:04:00 2 an incident or something that happened because
13:04:02 3 that's me basing it on what I'm seeing on this
13:04:04 4 video.

13:04:05 5 **Q.** But I also asked the question of did
13:04:08 6 you see the individual do anything threatening when
13:04:10 7 he was not obstructed by the truck, correct?

13:04:13 8 **A.** No, because I --

13:04:14 9 **MS. HUGGINS:** Form.

13:04:15 10 **THE WITNESS:** -- can't really attest to
13:04:16 11 that, too, because I wasn't on the scene. So I
13:04:18 12 don't know whether or not his demeanor was a
13:04:20 13 threatening manner.

13:04:22 14 So I can't attest to that, but on this
13:04:24 15 video, I don't see it, but it's a different
13:04:27 16 perspective if you're officers on the scene, which
13:04:30 17 I can't attest to because I wasn't there.

13:04:32 18 **BY MR. DAVENPORT:**

13:04:32 19 **Q.** And that's all I'm asking you, just
13:04:33 20 based on what you see on this video just so that
13:04:35 21 we're clear, you know. I don't want you to attest
13:04:36 22 to what the officer saw --

13:04:36 23 **A.** Right.

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13:04:37 1 Q. -- I just want you to say --

13:04:38 2 A. Yeah.

13:04:38 3 Q. -- what you see on this video.

13:04:40 4 A. Yeah.

13:04:41 5 Q. Do you see this video do anything
13:04:42 6 threatening to any of the officers besides the time
13:04:45 7 that he is obstructed by the vehicle?

13:04:47 8 MS. HUGGINS: Form. You're asking for his
13:04:48 9 opinion of the video.

13:04:50 10 MR. DAVENPORT: No, I'm asking does he see
13:04:52 11 anything on the video that shows this individual
13:04:54 12 doing anything threatening.

13:05:00 13 MS. HUGGINS: Form objection. It's not --
13:05:04 14 it's been asked and answered several times.

13:05:06 15 THE WITNESS: Yeah, I already touched base
13:05:07 16 on that. This video that I'm viewing, no, I don't
13:05:11 17 see anything threatening, but like I said, there's
13:05:14 18 different perspectives from the person who was
13:05:16 19 actually there in that vehicle.

13:05:18 20 I mean, it's totally different from what
13:05:19 21 they see and what I see on video, but to answer
13:05:21 22 your question, I don't see anything threatening
13:05:23 23 from this video from my point of view sitting in

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13:05:26 1 this chair.

13:05:26 2 **BY MR. DAVENPORT:**

13:05:26 3 **Q.** Okay. Thank you. That was the
13:05:28 4 question that I asked.

13:05:29 5 Did you see anything -- well, do you recall
13:05:38 6 seeing the individual that the car collided with?

13:05:42 7 **MS. HUGGINS:** Form. Just at what time frame
13:05:45 8 are you talking about?

13:05:45 9 **THE WITNESS:** Right.

13:05:46 10 **BY MR. DAVENPORT:**

13:05:47 11 **Q.** Well, it was at the beginning of this
13:05:48 12 video. Do you recall seeing an individual where a
13:05:51 13 car collided with an individual?

13:05:54 14 **MS. HUGGINS:** Form.

13:05:54 15 **THE WITNESS:** On this video right here or
13:05:56 16 are you talking about me at that date and time?

13:05:59 17 **BY MR. DAVENPORT:**

13:05:59 18 **Q.** I'm saying what you're seeing right
13:06:01 19 here on this video.

13:06:02 20 **A.** Did I see him colliding with the
13:06:04 21 vehicle?

13:06:04 22 **Q.** Well, did you see an individual and a
13:06:06 23 car collide with each other?

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13:06:07 1 **A.** Yes.

13:06:08 2 **Q.** Okay. And we can just replay it really
13:06:11 3 quickly.

13:06:18 4 **MS. HUGGINS:** I'm not sure why you're
13:06:20 5 replaying it. He just answered your question.

13:06:21 6 **THE WITNESS:** Yeah, I'm getting --

13:06:21 7 **MR. DAVENPORT:** Well, it seems that there's
13:06:23 8 some confusion over what we're talking about, so I
13:06:25 9 want to make sure that we're absolutely crystal
13:06:28 10 clear on what we're seeing.

13:06:29 11 **MS. HUGGINS:** He asked if are you talking
13:06:30 12 about the day and time or the video and you said
13:06:32 13 the video. And then he answered your question
13:06:35 14 directly. We can read it back.

13:06:36 15 **MR. DAVENPORT:** I just don't understand why
13:06:38 16 we just can't play the video and just that way, we
13:06:40 17 can have him refreshed and watch the video.

13:06:40 18 **MS. HUGGINS:** Because that's asking and
13:06:42 19 answering a question repeatedly.

13:06:43 20 **MR. DAVENPORT:** Okay. I'm going to play the
13:06:45 21 video.

13:06:57 22 **BY MR. DAVENPORT:**

13:06:58 23 **Q.** Okay. Now, on the video, did you just

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13:07:06 1 see a car and a person collide together?

13:07:08 2 **A.** Yes.

13:07:08 3 **MS. HUGGINS:** Form.

13:07:09 4 **THE WITNESS:** On the video, I seen the
13:07:10 5 person and the car collide with each other.

13:07:13 6 **BY MR. DAVENPORT:**

13:07:13 7 **Q.** Based on what you saw in the video, did
13:07:15 8 you see a crime occur?

13:07:16 9 **MS. HUGGINS:** Form. That's definitely an
13:07:17 10 opinion question.

13:07:18 11 **MR. DAVENPORT:** Well, he's an officer. He
13:07:20 12 can certainly testify as to whether based on what
13:07:22 13 he sees in this video actually if he thinks that a
13:07:25 14 crime just occurred.

13:07:26 15 **THE WITNESS:** Well, based on this video --

13:07:27 16 **MS. HUGGINS:** No, no. No, no. Wait a
13:07:28 17 minute. That is an opinion question.

13:07:32 18 **MR. DAVENPORT:** He's watching a video, so he
13:07:34 19 can provide factually if he thinks that a -- that a
13:07:37 20 crime just occurred when a car and an individual
13:07:40 21 were struck together.

13:07:43 22 If you want to instruct him not to answer
13:07:44 23 it, I'll just -- I'll preserve it for the record

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13:07:46 1 and we'll bring him back in. That's perfectly
13:07:49 2 fine.

13:07:49 3 **MS. HUGGINS:** Your question is if watching a
13:07:51 4 video he is able to say whether he observed a crime
13:07:54 5 take place?

13:07:55 6 **MR. DAVENPORT:** Yeah. Based on what he just
13:07:56 7 saw, was there any criminal action that took place.

13:07:59 8 **MS. HUGGINS:** On the part of who?

13:08:02 9 **MR. DAVENPORT:** Well, I don't know. You
13:08:05 10 tell me.

13:08:06 11 **MS. HUGGINS:** I'm objecting -- I'm objecting
13:08:09 12 on the -- to the form of the question and that it's
13:08:12 13 asking for an opinion of the video that clearly
13:08:16 14 speaks for itself.

13:08:17 15 So I mean, I want to get this over with, so
13:08:20 16 he can answer this, but I'm...

13:08:23 17 **MR. DAVENPORT:** You can preserve your
13:08:25 18 objection.

13:08:26 19 **BY MR. DAVENPORT:**

13:08:26 20 **Q.** Do you think a crime occurred based on
13:08:28 21 what you just saw?

13:08:29 22 **A.** In viewing this video, no, I don't
13:08:33 23 think a crime occurred because I'm just getting a

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13:08:36 1 little bit of it from this video.

13:08:38 2 If you asked me if I was there, yeah, it
13:08:40 3 would be a totality different opinion. But from
13:08:43 4 viewing this video right here, no, I do not see a
13:08:46 5 crime being occurred.

13:08:48 6 But that's all I have, so you can't ask me a
13:08:52 7 question on whether something has been like committed
13:08:56 8 just by seeing this little snippet of a video.

13:08:59 9 Q. Okay. At this point of the video, do
13:09:01 10 you see a second police car that's in the video?

13:09:03 11 A. No, I don't see one.

13:09:06 12 Q. Okay. Do you know who these two
13:09:36 13 officers are that are walking back toward the
13:09:38 14 scene?

13:09:38 15 A. No, I do not know them.

13:09:40 16 Q. Do you have any reason to believe that
13:09:42 17 they are not Officer Moriarity and Officer Schultz?

13:09:46 18 A. They're wearing the same colors as the
13:09:49 19 officers that got out of that Tahoe, that Chevy
13:09:51 20 Tahoe, so I'm assuming they're officers, too.

13:09:53 21 Q. Okay. But do you have any reason to
13:09:56 22 believe that they're not Officer Schultz and
13:09:58 23 Officer Moriarity, the officers that were walking

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13:10:00 1 down the street?

13:10:00 2 **A.** That, I can't tell you because you
13:10:02 3 can't get a look at their faces on the video.

13:10:04 4 **Q.** My question is do you have any reason
13:10:06 5 to believe that they are not those two individuals?

13:10:08 6 **A.** No.

13:10:08 7 **MS. HUGGINS:** And form.

13:10:08 8 **THE WITNESS:** No.

13:10:09 9 **MS. HUGGINS:** He answered your question.

13:10:10 10 **THE WITNESS:** No.

13:10:11 11 **BY MR. DAVENPORT:**

13:10:12 12 **Q.** Okay. Thank you. Does it appear that
13:10:22 13 this individual may have been arrested or detained
13:10:24 14 at this time?

13:10:25 15 **A.** Like I said earlier, I don't know
13:10:27 16 whether or not he was handcuffed. All I see is
13:10:29 17 just two officers walking to that gentleman.

13:10:32 18 **Q.** Okay. Based on what you see on
13:10:34 19 Exhibit 4-A, was this individual arrested?

13:10:44 20 **A.** Yes.

13:10:46 21 **Q.** Okay. And what tells you that?

13:10:48 22 **A.** The CB, central booking. The CB on
13:10:53 23 this document here.

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13:10:55 1 Q. Did you also discern that from the
13:10:58 2 disposition that says P1375 crime report?

13:11:01 3 A. Well, doing a P1375 crime report
13:11:04 4 doesn't constitute an arrest because you do it
13:11:06 5 without even doing no arrests. What got me to that
13:11:11 6 conclusion was CB.

13:11:14 7 Q. Okay. What times would you do a
13:11:16 8 criminal report without arresting or detaining
13:11:19 9 somebody?

13:11:19 10 A. What time would you do it?

13:11:21 11 Q. What instances.

13:11:22 12 A. Every single call that requires an
13:11:25 13 incident that a crime did occur. So an example, a
13:11:30 14 broken window, you could do it. Harassment, phone
13:11:35 15 harassment. There's many outcomes for you to do
13:11:37 16 the 1375.

13:11:39 17 Q. Okay. As you sit here today, do you
13:11:50 18 know what Mr. Kistner was charged with on January 1st
13:11:53 19 of 2017?

13:11:54 20 A. No, I do not.

13:11:58 21 Q. Would you believe me if I told you that
13:12:00 22 he was charged with a felony for what happened on
13:12:02 23 January 1st of 2017?

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13:12:04 1 **A.** It's not that I don't believe you, it's
13:12:06 2 that I don't know what he's been charged with.
13:12:09 3 That's up to the officers, whether or not they want
13:12:11 4 to charge a specific crime to an individual, but
13:12:15 5 whatever they charge is what they charge.

13:12:17 6 **Q.** Based on what you saw on that video,
13:12:20 7 did a felony occur?

13:12:21 8 **MS. HUGGINS:** Form. Same -- same objection
13:12:24 9 as to calling for opinion testimony.

13:12:26 10 **THE WITNESS:** That, I can't tell you.

13:12:27 11 **BY MR. DAVENPORT:**

13:12:28 12 **Q.** Based on what you saw on the video --

13:12:30 13 **A.** Based on what I saw, no.

13:12:32 14 **Q.** Okay.

13:12:33 15 **A.** But it's just video, there's more to
13:12:35 16 it, so. And I wasn't there, so I wouldn't know.

13:12:38 17 **Q.** Are you familiar with the crime
13:12:45 18 criminal mischief in the third degree?

13:12:47 19 **A.** I am.

13:12:48 20 **Q.** Okay. Do you know the elements that
13:12:51 21 are required for the crime of criminal mischief in
13:12:55 22 the third degree?

13:12:56 23 **A.** It's damage over a specified amount. I

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13:13:00 1 can't recall what amount. I believe it's \$1,500.

13:13:05 2 Q. So do you know if -- what the
13:13:13 3 designation of that crime is? Is it a felony, a
13:13:15 4 violation, a misdemeanor?

13:13:17 5 A. That, I can't tell you unless I have
13:13:18 6 the penal law book in front of me.

13:13:20 7 Q. Okay. So I'm going to show you what's
13:13:27 8 been marked as Exhibit 17.

13:13:35 9 A. Okay.

13:13:36 10 Q. Do you recognize this document?

13:13:38 11 A. I do.

13:13:39 12 Q. And what do you recognize it to be?

13:13:42 13 A. It's the charge, what they are charging
13:13:45 14 the defendant.

13:13:47 15 Q. Okay. Do you see in the part at the
13:13:52 16 very top -- well, close to the top where it says
13:13:55 17 criminal mischief third with damages greater than
13:14:04 18 250?

13:14:05 19 A. I do see that.

13:14:06 20 Q. Okay. Does that indicate to you that
13:14:09 21 the damage must be in excess of \$250?

13:14:13 22 A. Yes.

13:14:14 23 Q. So that would be the threshold amount

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13:14:16 1 that's required?

13:14:17 2 **A.** Yes. For that penal law charge, that's
13:14:21 3 correct.

13:14:21 4 **Q.** Okay. Now, do you see where it
13:14:26 5 describes the damage that was done to the vehicle
13:14:29 6 to support this criminal charge?

13:14:33 7 **A.** Driver's side mirror and driver's side
13:14:36 8 mirror of patrol vehicle. That's what they have
13:14:39 9 listed. And it's causing the mirror to be
13:14:43 10 dislodged from the vehicle and also causing the
13:14:46 11 driver's side window to malfunction.

13:14:49 12 **Q.** Okay. Do you remember looking at the
13:14:57 13 vehicle that was parked next to you on the day of
13:14:59 14 the incident?

13:14:59 15 **A.** No, I don't recall.

13:15:00 16 **Q.** Do you recall seeing a mirror that was
13:15:03 17 dislodged on any of the vehicles?

13:15:04 18 **A.** I don't recall.

13:15:06 19 **Q.** Did any of the officers complain about
13:15:14 20 a window not being able to function properly on
13:15:17 21 this date?

13:15:17 22 **A.** I don't recall.

13:15:21 23 **Q.** When you -- have you ever sent one of

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13:15:27 1 your patrol cars in for service?

13:15:28 2 **A.** Yes, I have.

13:15:29 3 **Q.** Okay. Do you ever review those
13:15:33 4 documents that -- that has to do with the car
13:15:37 5 repair?

13:15:37 6 **A.** I do. The person who is taking the
13:15:39 7 vehicle out to the garage has to fill out a form.
13:15:42 8 You have to do like your own personal inspection of
13:15:45 9 it, so yes.

13:15:48 10 **Q.** Okay. So you being the person that's
13:15:50 11 taking the vehicle also has to complete a form for
13:15:53 12 what needs to be completed?

13:15:54 13 **A.** Yes.

13:15:55 14 **Q.** Okay.

13:16:14 15 **MR. DAVENPORT:** Now, I don't believe that we
13:16:16 16 received that form from Ms. Velasquez on McDermott,
13:16:20 17 so to the extent that that form does exist, we are
13:16:22 18 just putting on the record that we are requesting
13:16:24 19 the document that was filled out when they took the
13:16:26 20 car in for service.

13:16:33 21 **MS. HUGGINS:** So that was a part of your
13:16:35 22 discovery demand and there was a response
13:16:37 23 indicating that there's no such form.

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13:16:39 1 **MR. DAVENPORT:** Okay.

13:16:39 2 **BY MR. DAVENPORT:**

13:16:41 3 **Q.** Is that a requirement, for officers to
13:16:43 4 fill out that form?

13:16:44 5 **A.** To my understanding, yes.

13:16:46 6 **Q.** How often do you take your car in for
13:16:49 7 service in a given year?

13:16:51 8 **A.** Generally, I take my patrol vehicle in
13:16:54 9 for an oil change. If there's something that
13:16:58 10 occurs, I document it and then take it to the
13:17:01 11 garage. And they service it for whatever I wrote
13:17:05 12 it up for.

13:17:06 13 **Q.** Okay. But my question is do you have a
13:17:10 14 rough estimate for how many times in a given year
13:17:13 15 you would take your patrol vehicle in?

13:17:14 16 **A.** I would say four to six times a year.

13:17:16 17 **Q.** And each those four to six times, you
13:17:18 18 would be expected to fill out a form when taking it
13:17:22 19 into service?

13:17:22 20 **A.** Well, I do, yes.

13:17:23 21 **Q.** Okay. Are there any circumstances or
13:17:29 22 instances that you would take your patrol vehicle
13:17:31 23 in for service where you would not fill out that

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13:17:35 1 form?

13:17:36 2 **A.** Me, I fill it out whenever I go to the
13:17:38 3 garage whether I need a new tire replaced or this
13:17:41 4 or that. That's me.

13:17:43 5 In regards to other officers, I don't know
13:17:45 6 what their preference is. But I'm all about paper
13:17:49 7 details, so I have to have something documented.

13:17:52 8 **Q.** Okay. The Dodge Charger that you were
13:17:57 9 driving on January 1st, 2017, is that the car that
13:18:00 10 you typically drive?

13:18:01 11 **A.** Yes.

13:18:01 12 **Q.** Okay. Is that the car that you also
13:18:05 13 typically take in for service and repair?

13:18:07 14 **A.** Yes.

13:18:07 15 **Q.** Okay. Now, I understand that there may
13:18:13 16 be days where you don't specifically drive this
13:18:15 17 vehicle, but has car number 625 generally been the
13:18:20 18 car that you have driven from January 1st, 2017, to
13:18:24 19 today?

13:18:25 20 **A.** I don't drive 625 anymore.

13:18:29 21 **Q.** Okay. What car do you drive?

13:18:31 22 **A.** 810, Charger 810.

13:18:34 23 **Q.** And when approximately did you switch

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13:18:37 1 over to the Charger 810?

13:18:39 2 **A.** I can't give you -- I don't know. I
13:18:43 3 don't recall when I took over that. It could be
13:18:46 4 two years.

13:18:48 5 **Q.** Okay.

13:18:50 6 **A.** Because the designators on the vehicle
13:18:53 7 like 625, six being 16, so that's the year of the
13:18:57 8 car. So 810 is -- 18 was when the vehicle was
13:19:02 9 manufactured.

13:19:03 10 **Q.** Okay.

13:19:05 11 **A.** But, yeah.

13:19:11 12 **Q.** So then since car 625 would have been
13:19:15 13 in 2016, the 2016 model, from 2016 to 2018, that
13:19:18 14 was your primary vehicle, was 625?

13:19:21 15 **A.** That was it, but on patrol, you're not
13:19:24 16 assigned like -- there's a preference of a vehicle
13:19:27 17 that you want.

13:19:28 18 625 was the vehicle because I took care of
13:19:31 19 it. When that was out of service, that vehicle,
13:19:34 20 you pretty much had whatever what was left on the
13:19:38 21 lot.

13:19:38 22 So it could be a Tahoe that you get one day
13:19:40 23 and it can be like a Crown Vic the next day and

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13:19:42 1 stuff because you're just waiting for your car to
13:19:45 2 come back from being serviced.

13:19:47 3 So you're not assigned a particular car,
13:19:49 4 it's just you have a preference for that one
13:19:51 5 vehicle.

13:19:52 6 Q. Okay. Being that car 625 was your
13:19:58 7 preference, that was generally the car that you
13:20:00 8 drove, though, from 2016 to 2018?

13:20:02 9 A. That's correct.

13:20:03 10 Q. Okay. And also it's generally your
13:20:05 11 understanding that every time that you take -- took
13:20:07 12 in car 625 for service, you filled out a form
13:20:11 13 before the service actually took place?

13:20:13 14 A. That's correct.

13:20:14 15 Q. Okay. Would it be your expectation
13:20:19 16 that this type of damage that was caused to a
13:20:21 17 vehicle would have been filled out on some type of
13:20:25 18 form?

13:20:25 19 MS. HUGGINS: Form.

13:20:26 20 THE WITNESS: On my -- my expectations, yes,
13:20:29 21 because I will take care of it and that's me. I
13:20:32 22 can't speak on other officers and how they do
13:20:34 23 things, but if it was me, yes.

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13:20:37 1 **BY MR. DAVENPORT:**

13:20:37 2 **Q.** Now, are your expectations shared with
13:20:40 3 your supervisor?

13:20:42 4 **A.** They're aware of my expectations and
13:20:44 5 they know how I operate, so yes, they assume
13:20:49 6 nothing but the best with me.

13:20:51 7 **Q.** Okay. Is it your -- well, who was your
13:20:54 8 supervisor?

13:20:54 9 **A.** Anthony McHugh and Jenny Velez.

13:20:59 10 **Q.** Okay. Now, does your supervisor expect
13:21:04 11 other officers in the C District to fill out the
13:21:09 12 forms that are required for the necessary repairs?

13:21:11 13 **MS. HUGGINS:** Form.

13:21:14 14 **THE WITNESS:** Every officer?

13:21:15 15 **MS. HUGGINS:** That question calls for
13:21:16 16 speculation.

13:21:16 17 **MR. DAVENPORT:** No, I mean, he's a
13:21:17 18 C District officer. He knows what a supervisor's
13:21:20 19 expectations are.

13:21:20 20 **THE WITNESS:** It's not just on the
13:21:21 21 expectations of the supervisors, it's on the
13:21:25 22 officer itself. Like you have the manual
13:21:28 23 procedures and you have to like follow pretty much

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13:21:30 1 what they state.

13:21:31 2 It's not up to the supervisors to come up
13:21:33 3 behind your back and say, hey, make sure you take
13:21:37 4 care of this and that. You as an officer have to
13:21:40 5 take it upon yourself to take care of that issue.

13:21:43 6 Q. So would you face any discipline if you
13:21:46 7 didn't fill out the necessary paperwork for these
13:21:49 8 repairs?

13:21:49 9 A. Absolutely, yes.

13:21:50 10 Q. And who would discipline you?

13:21:52 11 A. Internal affairs.

13:21:53 12 Q. Okay. Not your supervisor?

13:21:55 13 A. The supervisor will be aware of the
13:21:58 14 incident and they will be brought up to internal
13:22:03 15 affairs, but it's the person who did the
13:22:05 16 infraction, their immediate supervisor. Then it
13:22:08 17 goes up the chain. So they're aware of the
13:22:10 18 situation, too.

13:22:10 19 Q. Okay. Would you ever have any sort of
13:22:13 20 a conference with your lieutenants, Anthony McHugh
13:22:18 21 or Jenny Velez, if you weren't meeting the
13:22:20 22 expectations that were expected of you as an
13:22:22 23 officer?

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13:22:23 1 **MS. HUGGINS:** Form. You can answer.

13:22:24 2 **THE WITNESS:** Well, if an incident did not
13:22:26 3 occur, then you're not going to have a conference.
13:22:29 4 Generally, the only time you're talking to a
13:22:32 5 supervisor in regards to -- I don't know. What
13:22:33 6 situation do you want me to talk about?

13:22:35 7 **BY MR. DAVENPORT:**

13:22:35 8 **Q.** I'm just talking about filling out
13:22:38 9 paperwork for car repairs.

13:22:39 10 **A.** Yes, because it goes to the supervisor
13:22:40 11 and they have to sign it, too. It could be my
13:22:43 12 immediate supervisors or it could be the person who
13:22:45 13 is running the police garage. But it's -- my
13:22:49 14 signature is not the only signature that goes on
13:22:51 15 that document.

13:22:52 16 **Q.** Okay. So the supervisor would also put
13:22:54 17 their signature on the form for a repair?

13:22:57 18 **A.** Yes. Because they will see everything,
13:22:59 19 yes.

13:22:59 20 **Q.** Okay. Now, as an officer, do you
13:23:07 21 typically document evidence that's required to
13:23:11 22 prove a crime that you accuse someone with?

13:23:13 23 **A.** Yes.

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13:23:13 1 **Q.** Okay. In the instance of accusing
13:23:17 2 somebody of intentionally dislodging a driver's
13:23:21 3 side mirror and causing damage to the malfunction
13:23:25 4 or function of the driver's side mirror(sic), how
13:23:28 5 would you document that evidence?

13:23:30 6 **MS. HUGGINS:** Form.

13:23:32 7 **THE WITNESS:** Okay. For me in regards to
13:23:34 8 that, generally you have -- if it's vehicle --
13:23:37 9 damage done to your patrol vehicle, you have to
13:23:40 10 notify your supervisor.

13:23:41 11 And they will notify the accident
13:23:43 12 investigation unit. And they will come by and they
13:23:46 13 will take pictures and collect evidence.

13:23:50 14 **BY MR. DAVENPORT:**

13:23:51 15 **Q.** Would an officer ever be able to take
13:23:53 16 their own photographs to document it?

13:23:54 17 **A.** Well, it depends on that officer, but
13:23:56 18 if they want their phones taken away or whatever, I
13:24:00 19 mean, by all means they could do that.

13:24:02 20 But generally if they do do that, it's up to
13:24:05 21 them. But it's usually the specialized units that
13:24:07 22 will take the photos, not the officers.

13:24:12 23 **Q.** Okay. Why would the officer have to

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13:24:14 1 have their phone taken away if they took a
13:24:17 2 photograph?

13:24:17 3 **A.** I'm not saying --

13:24:17 4 **MS. HUGGINS:** Form.

13:24:18 5 **THE WITNESS:** -- per se. Generally, it's
13:24:21 6 the courts or whatever. I mean, if you have
13:24:22 7 something on your phone, then the Court will
13:24:25 8 subpoena that and grab your phone.

13:24:26 9 But it's -- it's more or less -- like I
13:24:29 10 said, I don't know what everyone else does, but for
13:24:32 11 me, I usually let our units take care of that and
13:24:36 12 let them collect the evidence.

13:24:38 13 **BY MR. DAVENPORT:**

13:24:39 14 **Q.** Okay. Are you aware of officers who
13:24:42 15 take photographs on their phone and use it as
13:24:44 16 evidence?

13:24:45 17 **A.** No, I'm not.

13:24:46 18 **Q.** Now, if you appeared in court and there
13:24:59 19 was no evidence to support the crime that you
13:25:01 20 accuse somebody with, how would that reflect on you
13:25:05 21 as an officer?

13:25:07 22 **MS. HUGGINS:** Form.

13:25:08 23 **THE WITNESS:** My opinion? If something like

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13:25:11 1 that didn't turn out the way I want it to turn out
13:25:14 2 in regards to a court case?

13:25:16 3 I mean, it's due process. It's the courts.
13:25:19 4 If the Court finds that the person is not guilty,
13:25:21 5 then I did my job, I did it to the best of my
13:25:24 6 ability, and then I just move on. I don't hold any
13:25:27 7 grudges or anything like that.

13:25:28 8 **BY MR. DAVENPORT:**

13:25:28 9 **Q.** What if you accuse somebody of
13:25:30 10 something and you didn't have any evidence to
13:25:31 11 support the crime that you charged that individual
13:25:34 12 with, how would that reflect on you?

13:25:35 13 **A.** It wouldn't --

13:25:35 14 **MS. HUGGINS:** Form.

13:25:36 15 **THE WITNESS:** -- have reflected --

13:25:39 16 **MS. HUGGINS:** And that calls for
13:25:39 17 speculation. What do you mean, how -- what do you
13:25:41 18 mean by the phrase "how it reflects on you"?

13:25:43 19 **BY MR. DAVENPORT:**

13:25:44 20 **Q.** Well, would a supervisor have to talk
13:25:45 21 to you about why you brought charges against
13:25:48 22 somebody without evidence?

13:25:49 23 **MS. HUGGINS:** Form. Calls for speculation.

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13:25:51 1 You can answer.

13:25:52 2 **THE WITNESS:** I wouldn't know because I've
13:25:53 3 never been in that situation.

13:25:55 4 **BY MR. DAVENPORT:**

13:25:55 5 **Q.** Are you aware of officers who have been
13:25:57 6 in that situation?

13:25:57 7 **A.** I wouldn't know, either.

13:25:59 8 **Q.** Do you not talk with other officers?

13:26:01 9 **A.** I do talk to other officers but I don't
13:26:03 10 talk in regards to stuff at work, incidents that
13:26:10 11 occurred at work.

13:34:39 12 (A recess was then taken.)

13:34:39 13 **BY MR. DAVENPORT:**

13:34:47 14 **Q.** So showing you what has been marked as
13:34:50 15 Exhibit 11, it is the fourth video segment. The
13:34:54 16 number is 06_20170101105233. The timestamp is one
13:35:08 17 minute and 44 seconds into this video segment.

13:35:15 18 Now, Officer Santana, I just want you to
13:35:18 19 tell me, do you see all five officers currently
13:35:21 20 standing in a group?

13:35:22 21 **A.** Yes.

13:35:22 22 **Q.** Okay. Now, does it appear that the
13:35:32 23 officers are breaking from the group and walking

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13:35:34 1 back towards their respective vehicles?

13:35:37 2 **A.** Yes.

13:35:38 3 **Q.** Do you see one officer who is currently
13:35:49 4 standing in the middle of the street at timestamp
13:35:52 5 two minutes and four seconds into the video
13:35:56 6 segment?

13:35:56 7 **A.** Yes.

13:35:57 8 **Q.** Okay. I just want you to generally
13:35:59 9 describe what you see this officer doing from this
13:36:02 10 moment forward.

13:36:04 11 **MS. HUGGINS:** Form.

13:36:07 12 **THE WITNESS:** He's standing in the middle of
13:36:09 13 the street.

13:36:12 14 **BY MR. DAVENPORT:**

13:36:12 15 **Q.** What reason do you think that she was
13:36:14 16 standing in front of the car?

13:36:16 17 **MS. HUGGINS:** Form.

13:36:17 18 **THE WITNESS:** I can't tell you. I don't
13:36:18 19 know.

13:36:19 20 **BY MR. DAVENPORT:**

13:36:19 21 **Q.** Is it possible that she was taking a
13:36:21 22 photograph?

13:36:21 23 **MS. HUGGINS:** Form.

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13:36:22 1 **THE WITNESS:** You can't tell from that
13:36:24 2 video.

13:36:24 3 **BY MR. DAVENPORT:**

13:36:27 4 **Q.** Is it possible that she was taking a
13:36:29 5 photograph to document the damage to her vehicle?

13:36:31 6 **MS. HUGGINS:** Form.

13:36:32 7 **THE WITNESS:** I can't see a camera. I can't
13:36:36 8 see anything from this video. I can't see it.

13:36:38 9 **BY MR. DAVENPORT:**

13:36:38 10 **Q.** Okay. Do you recall if anybody told
13:36:42 11 that officer to take a photograph of the vehicle?

13:36:44 12 **A.** I don't recall.

13:36:46 13 **Q.** Okay. Do you recall anything about any
13:36:50 14 of those discussions with any of those officers
13:36:53 15 that day?

13:36:54 16 **A.** No, I don't recall.

13:36:55 17 **Q.** All right. Do you recall any
13:37:07 18 individuals talking to any of the officers at the
13:37:11 19 scene?

13:37:12 20 **A.** No, I don't recall.

13:37:13 21 **Q.** Nobody from the apartment complex or
13:37:17 22 the houses that were nearby?

13:37:19 23 **A.** No, I don't recall.

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13:37:20 1 Q. Okay. Nobody was screaming from a
13:37:24 2 window or anything like that?

13:37:25 3 A. I don't recall.

13:37:27 4 Q. Do you recall if at any point any
13:37:31 5 pedestrian or anybody from a house said that we
13:37:33 6 have this on video?

13:37:34 7 A. No, I don't recall.

13:37:36 8 Q. Okay. Did you know at this time that
13:37:39 9 there was surveillance video that was focused on
13:37:43 10 where the officers were standing?

13:37:45 11 A. No.

13:37:46 12 Q. Did you come to learn of that fact at
13:37:48 13 any point on that day?

13:37:49 14 A. No.

13:37:51 15 Q. Did you come to learn of that fact at
13:37:53 16 any point before your deposition today?

13:37:55 17 A. No.

13:37:56 18 Q. Not even when you saw on the news story
13:37:59 19 that there was surveillance footage of everything
13:38:01 20 that happened?

13:38:02 21 A. Well, besides the news story, no.

13:38:04 22 Q. And then when you watched the video
13:38:06 23 this morning, correct?

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13:38:07 1 **A.** That's correct.

13:38:08 2 **Q.** And then when you watched the video for
13:38:10 3 your interrogatories?

13:38:10 4 **A.** That's correct.

13:38:11 5 **Q.** And at all those times, you knew that
13:38:13 6 there was surveillance footage of the incident on
13:38:15 7 that day?

13:38:16 8 **A.** That's correct, from viewing it.

13:38:17 9 **Q.** Okay. Thank you. I'm going to show
13:38:33 10 you what has been marked as Exhibit 18. Do you
13:38:42 11 recognize this document?

13:38:43 12 **A.** No, I do not.

13:38:44 13 **Q.** Do you know generally what this
13:38:47 14 document is used for?

13:38:49 15 **A.** No, I do not.

13:38:51 16 **Q.** Have you ever seen this document
13:38:52 17 before?

13:38:53 18 **A.** No, I haven't.

13:38:54 19 **Q.** Have you ever seen a general form of
13:38:56 20 this document?

13:38:56 21 **A.** No, I haven't.

13:38:57 22 **Q.** Okay. Do you have any reason to
13:39:00 23 believe that this is not a fleet management

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13:39:03 1 maintenance work order?

13:39:04 2 **A.** No.

13:39:05 3 **Q.** Okay. Who fills out this work order?

13:39:09 4 **A.** I do not know.

13:39:10 5 **Q.** Okay. But it's not the officers who
13:39:13 6 fill it out?

13:39:13 7 **A.** No.

13:39:14 8 **Q.** Do you think it's filled out by the
13:39:16 9 garage?

13:39:16 10 **A.** Probably filled out by the maintenance
13:39:19 11 work -- the worker within the maintenance shop.

13:39:21 12 **Q.** Okay. Does the City of Buffalo have
13:39:24 13 its own maintenance shop?

13:39:25 14 **A.** That, I can't tell you.

13:39:28 15 **Q.** Where do you take your car when it
13:39:30 16 needs to be repaired?

13:39:31 17 **A.** Seneca garage, but it's -- I don't know
13:39:35 18 if they work for the city or they're contracted
13:39:37 19 with the city. I don't know.

13:39:38 20 **Q.** Do you ever take your vehicle to any
13:39:40 21 other garage?

13:39:41 22 **A.** No.

13:39:43 23 **Q.** Okay. And that's where you've taken

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13:39:45 1 your vehicle to -- that's the garage that you've
13:39:49 2 taken your vehicle to since you started?

13:39:50 3 **A.** That's correct.

13:39:51 4 **Q.** Do you ever see other police vehicles
13:39:53 5 that are there at Seneca garage?

13:39:55 6 **A.** In regards to what? From different
13:39:57 7 agencies or?

13:39:58 8 **Q.** Specifically for the City of Buffalo.

13:40:00 9 **A.** No, just -- just our vehicles, anything
13:40:04 10 with the City of Buffalo.

13:40:05 11 **Q.** Okay. So it's more than just your
13:40:07 12 vehicle that goes to Seneca garage?

13:40:09 13 **A.** Yes, it's any city vehicle.

13:40:11 14 **Q.** Okay. So the form that you typically
13:40:13 15 fill out that you would give to the service garage
13:40:16 16 is different from this form?

13:40:18 17 **A.** Yes.

13:40:18 18 **Q.** Okay. Do you know what car number this
13:40:21 19 form refers to?

13:40:23 20 **A.** It refers to vehicle number 473.

13:40:27 21 **Q.** Okay. And then looking again at
13:40:29 22 Exhibit 16, who was driving vehicle number 473 on
13:40:34 23 January 1st of 2017?

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13:40:36 1 **A.** Officer McDermott and Officer Velez.

13:40:40 2 **Q.** Okay. Do you see on the service
13:40:44 3 information the date that this service took place?

13:40:50 4 **A.** January 5th of 2017.

13:40:53 5 **Q.** Okay. And do you see where it says
13:40:55 6 what the service was done right below it?

13:40:57 7 **A.** Cooling system.

13:40:58 8 **Q.** Okay. And then what about the line
13:41:00 9 right below that?

13:41:01 10 **A.** R&R water pump, serp belt.

13:41:15 11 (Discussion off the record.)

13:41:19 12 **BY MR. DAVENPORT:**

13:41:20 13 **Q.** Do you see anything that would indicate
13:41:21 14 that the driver's side mirror was fixed on this
13:41:24 15 date?

13:41:25 16 **A.** No.

13:41:25 17 **Q.** Okay. Anything that says that the
13:41:27 18 driver's side mirror was dislodged from the
13:41:29 19 vehicle?

13:41:30 20 **A.** No.

13:41:31 21 **Q.** Okay. Anything that talks about a
13:41:33 22 driver's side window malfunctioning?

13:41:42 23 **A.** No.

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13:41:42 1 **Q.** Okay. Did you ever speak to Ms. Velez
13:41:47 2 and Ms. McDermott about the condition of their
13:41:50 3 vehicle after January 1st of 2017?

13:41:52 4 **A.** No.

13:41:52 5 **Q.** Okay. Did they ever make any general
13:41:54 6 complaints about their vehicle after January 1st of
13:41:57 7 2017?

13:41:57 8 **A.** I would not know.

13:41:59 9 **Q.** Well, did they ever make any general
13:42:01 10 complaints to you?

13:42:02 11 **A.** No.

13:42:03 12 **Q.** Okay. How often do you talk to
13:42:06 13 Ms. McDermott and Ms. Velez?

13:42:07 14 **A.** Not often.

13:42:09 15 **Q.** Maybe once a week?

13:42:11 16 **A.** No.

13:42:12 17 **Q.** Okay. Less than once a week?

13:42:14 18 **A.** Yes.

13:42:15 19 **Q.** Once a month?

13:42:16 20 **A.** I don't know. Whenever I walk by, hi,
13:42:18 21 'bye and that's it, but we don't have
13:42:20 22 conversations.

13:42:20 23 **Q.** Okay. How many people are in your

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13:42:23 1 platoon for day shift?

13:42:25 2 **A.** Right now, 12, I believe.

13:42:28 3 **Q.** Of those 12 people, do you have anybody
13:42:33 4 that you speak to on a regular basis at work?

13:42:36 5 **A.** At work or outside of work?

13:42:39 6 **Q.** At work.

13:42:40 7 **A.** I talk to everybody that I work with.

13:42:42 8 **Q.** But regularly that you speak to them?

13:42:44 9 **A.** Yes.

13:42:45 10 **Q.** What do you define regularly as?

13:42:49 11 **A.** How many times -- it's pretty much just
13:42:52 12 basically in the morning when we arrive at work and
13:42:54 13 we have briefings and pretty much just -- usually
13:43:00 14 just how it's going and this and that, but that's
13:43:02 15 pretty much it, so just once.

13:43:04 16 **Q.** During those briefings, did Ms. McDermott
13:43:07 17 or Ms. Velez ever bring up complaints of their
13:43:10 18 after January 1st of 2017?

13:43:11 19 **A.** No.

13:43:12 20 **Q.** I'm going to show what's been marked as
13:43:43 21 Exhibit 9. Do you recognize that document?

13:43:48 22 **A.** Yes.

13:43:48 23 **Q.** What do you otherwise recognize it to

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13:43:50 1 be?

13:43:50 2 **A.** It's the case history.

13:43:52 3 **Q.** Okay. And what kind of information
13:43:53 4 goes on a case history?

13:43:55 5 **A.** Who did what in the incident.

13:43:56 6 **Q.** Okay. Do you see your name listed at
13:43:59 7 all on this case history?

13:44:00 8 **A.** No.

13:44:01 9 **Q.** Okay. Do officers who respond to a
13:44:05 10 call typically end up on a case history?

13:44:07 11 **A.** If they're assigned to that call, yes,
13:44:10 12 but it depends on the primary officer whether or
13:44:14 13 not they have them do a specific function with that
13:44:16 14 call.

13:44:17 15 **Q.** Okay. Are there only four officers who
13:44:27 16 are listed on this case history?

13:44:28 17 **A.** That's correct.

13:44:28 18 **Q.** Okay. And what is this case history
13:44:33 19 used for? What's the purpose?

13:44:34 20 **A.** The purpose of this case history is to
13:44:36 21 have it in one sheet who did what in that incident.
13:44:41 22 That's the main purpose of this.

13:44:42 23 **Q.** Okay. Is this something that's

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13:44:46 1 reviewed by anybody?

13:44:49 2 **A.** Generally this goes to the court
13:44:51 3 paperwork.

13:44:53 4 **Q.** Besides the courts, is there any other
13:44:55 5 officer supervisors who review this document?

13:44:57 6 **A.** Not that I'm aware of, no.

13:44:59 7 **Q.** So it's just mostly used for court
13:45:02 8 purposes then?

13:45:03 9 **A.** That's correct.

13:45:04 10 **Q.** Okay. And so it generally describes
13:45:06 11 the functions that took place for each of the
13:45:09 12 officers who responded to the incident?

13:45:11 13 **A.** That's correct.

13:45:50 14 **Q.** Do you still maintain a copy of the
13:45:52 15 complaint that was served upon you?

13:45:54 16 **A.** No.

13:45:56 17 **Q.** Where did you give that complaint to?
13:46:00 18 Who has it?

13:46:01 19 **A.** In regards to the copy that's given to
13:46:02 20 us?

13:46:03 21 **Q.** Uh-huh.

13:46:04 22 **A.** A shredder place.

13:46:08 23 **Q.** You guys shred the complaints?

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13:46:11 1 **A.** No, we have bins in the station house
13:46:13 2 where we recycle documentation. It's a locked bin
13:46:16 3 that -- I believe the company is called White
13:46:18 4 Mountain. I don't keep anything on file.

13:46:20 5 **MS. HUGGINS:** When you say complaint, just
13:46:22 6 to be clear, what are you referring to?

13:46:23 7 **MR. DAVENPORT:** The complaint that he was
13:46:24 8 served with when he was notified of this lawsuit.

13:46:26 9 **MS. HUGGINS:** Did you understand the
13:46:27 10 question to refer to that?

13:46:29 11 **THE WITNESS:** Yeah, whether or not I kept a
13:46:31 12 copy of this thing myself. My answer to that is
13:46:33 13 I'll view it and I'll go to it and I'll get rid of
13:46:37 14 that paperwork in that respective bin.

13:46:40 15 **BY MR. DAVENPORT:**

13:46:40 16 **Q.** So when you drop off the paperwork into
13:46:43 17 the bin, do you know what happens to it afterwards?

13:46:46 18 **A.** Well, it's up to the company and the
13:46:47 19 city. I'm assuming they destroy everything.

13:46:50 20 **Q.** What other types of paperwork do you
13:46:53 21 put into that bin?

13:46:53 22 **A.** Anything work related, any information.

13:46:58 23 **Q.** And how often are you putting documents

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13:47:00 1 into that bin?

13:47:01 2 **A.** Every day.

13:47:09 3 **Q.** Do you think that that may have been a
13:47:11 4 document that you would want to hold on to if you
13:47:14 5 were named in a lawsuit?

13:47:15 6 **A.** If I was named in a lawsuit, I would
13:47:17 7 assume that the city attorneys will have all that
13:47:21 8 documentation. I don't need to carry that with me.

13:47:25 9 **Q.** What happens if you wanted to go to
13:47:26 10 your own attorney besides the city attorney, would
13:47:29 11 you want to keep that complaint?

13:47:31 12 **MS. HUGGINS:** Form.

13:47:32 13 **THE WITNESS:** Absolutely.

13:47:37 14 **BY MR. DAVENPORT:**

13:47:38 15 **Q.** If you got rid of the document, would
13:47:40 16 there be another way of notifying a new attorney of
13:47:43 17 what the allegations are in that complaint?

13:47:45 18 **A.** That, I don't know the ins and outs of
13:47:48 19 that, so I'm not sure. It's got to be with the
13:47:51 20 city attorneys in their department.

13:47:54 21 **Q.** Is that something that's generally done
13:47:56 22 in the City of Buffalo, is recycle complaints that
13:48:00 23 are served upon their officers?

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13:48:02 1 **A.** Well, that's what I do. I don't know
13:48:04 2 what other officers do.

13:48:05 3 **Q.** How many lawsuits have you been named
13:48:08 4 in?

13:48:08 5 **A.** One.

13:48:11 6 **Q.** Just this one?

13:48:12 7 **A.** No, there's another one.

13:48:14 8 **Q.** So two then?

13:48:15 9 **A.** Yes.

13:48:16 10 **Q.** Okay. Do you know when the file date
13:48:22 11 was for that other lawsuit?

13:48:25 12 **A.** It's when I broke my arm in a
13:48:29 13 city-involved accident. I can't tell you the exact
13:48:31 14 year. I believe it's 2014.

13:48:36 15 **Q.** So was that a complaint that was filed
13:48:38 16 by you?

13:48:39 17 **A.** No. It was an insurance company trying
13:48:41 18 to go after me on behalf of their client.

13:48:45 19 **Q.** Okay.

13:48:56 20 **A.** Did you have a question about that?

13:48:59 21 **Q.** No, he can't ask questions. Don't
13:49:01 22 worry about it.

13:49:11 23 So after you were served with the complaint,

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13:49:13 1 did you read any of the allegations that were in
13:49:15 2 there?

13:49:15 3 **A.** No. The only thing I read was to
13:49:18 4 report to Corporation Counsel and that's pretty
13:49:21 5 much it.

13:49:22 6 **Q.** Okay. Did it give you like a date when
13:49:25 7 to report or anything like that?

13:49:26 8 **A.** Yes, there was a date and time given to
13:49:28 9 me.

13:49:28 10 **Q.** And then did you calendar it and make
13:49:30 11 that scheduled appointment?

13:49:32 12 **A.** Yeah, I kept it in my mailbox at work.
13:49:35 13 And then after I showed up, after I went, when I
13:49:39 14 came back to work, I used the recycling.

13:49:41 15 **MS. HUGGINS:** I think there's another
13:49:42 16 terminology confusion. Are you talking about the
13:49:45 17 court liaison notice to come and appear for court?

13:49:48 18 **THE WITNESS:** Yes, that's what he --

13:49:49 19 **MS. HUGGINS:** I think he's unsure what you
13:49:51 20 mean by complaint.

13:49:52 21 **MR. DAVENPORT:** Got you. Okay.

13:49:58 22 **MS. HUGGINS:** So when he said served with a
13:50:00 23 complaint, are you thinking of a court liaison

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13:50:03 1 document?

13:50:03 2 **THE WITNESS:** Yeah, serving me saying that
13:50:04 3 you have to show up for this and that. Is that
13:50:07 4 what you were talking about?

13:50:09 5 **BY MR. DAVENPORT:**

13:50:09 6 **Q.** No. So I'm talking about at the
13:50:14 7 initial stages of the lawsuit, were you ever
13:50:16 8 handed -- it was about a 60-page document that
13:50:20 9 would have had the allegations for this lawsuit as
13:50:23 10 well as a recording of what happened?

13:50:25 11 **A.** Thanks for clearing it up. No.

13:50:28 12 **Q.** You never received that document?

13:50:29 13 **A.** Never did.

13:50:30 14 **Q.** Are you aware if somebody at your
13:50:33 15 office received that document on your behalf?

13:50:35 16 **A.** No.

13:50:36 17 **Q.** Okay. But as you sit here today, you
13:50:39 18 have never seen that document before?

13:50:40 19 **A.** Never did.

13:50:42 20 **Q.** Okay. For the other lawsuit that you
13:50:49 21 were named in, did you ever review the allegations
13:50:51 22 in that complaint?

13:50:51 23 **A.** With my attorney I had, yes.

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13:50:54 1 **Q.** But you haven't done the same thing
13:50:56 2 here?

13:50:56 3 **A.** No.

13:50:59 4 **Q.** Do you know any of the details of
13:51:03 5 anything that happened on January 1st of 2017?

13:51:06 6 **A.** No.

13:51:07 7 **MS. HUGGINS:** Just to be clear since there
13:51:10 8 was confusion on terminology, when you were
13:51:13 9 referring to shredding a document, the document was
13:51:15 10 the court liaison notice?

13:51:16 11 **THE WITNESS:** Yes. That document stating
13:51:19 12 that I have to show up at court at a specific date
13:51:21 13 and time, that's what I'm talking about.

13:51:23 14 **BY MR. DAVENPORT:**

13:51:24 15 **Q.** But you've never reviewed the 60-page
13:51:27 16 complaint that initiated this lawsuit --

13:51:29 17 **A.** No.

13:51:30 18 **Q.** -- against you? Okay. But you did
13:51:34 19 review the complaint for the other incident that
13:51:37 20 you were involved in?

13:51:38 21 **A.** Yes.

13:51:38 22 **Q.** Okay. Did you keep that complaint?

13:51:42 23 **A.** No, I don't have it anymore.

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13:51:44 1 Q. Well, did you keep it at the time?

13:51:46 2 A. I didn't keep it but my attorney did.

13:51:48 3 Q. Okay. Did you also shred that

13:51:51 4 complaint?

13:51:51 5 A. Well, everything that I have, yes, I

13:51:53 6 do. I don't keep anything. I don't keep files.

13:51:56 7 Q. Okay. Have you ever been subjected to

13:52:06 8 an internal affairs investigation?

13:52:08 9 A. No.

13:52:10 10 Q. Not once?

13:52:12 11 A. No. I was a witness but I wasn't the

13:52:14 12 target.

13:52:14 13 Q. Okay. Were you a witness for this

13:52:17 14 incident that transpired on January 1st of 2017?

13:52:20 15 MS. HUGGINS: Form.

13:52:21 16 THE WITNESS: No, I don't recall.

13:52:23 17 BY MR. DAVENPORT:

13:52:23 18 Q. Were you ever interviewed or deposed by

13:52:26 19 anybody with internal affairs for this incident?

13:52:29 20 A. No.

13:52:29 21 Q. Okay. Are you aware of any officers

13:52:35 22 who were deposed or required to give statements as

13:52:39 23 witnesses for this incident?

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13:52:40 1 **MS. HUGGINS:** I'm going to object to that
13:52:43 2 under the language in the order to show cause.
13:52:48 3 That is very broad language there. I don't know
13:52:51 4 what it encompasses and I am --

13:52:53 5 **MR. DAVENPORT:** Well, I have a copy if you
13:52:54 6 want to look at it.

13:52:55 7 **MS. HUGGINS:** I have a copy as well with me.

13:52:56 8 **MR. DAVENPORT:** Okay.

13:52:56 9 **MS. HUGGINS:** The issue is that it's still
13:52:58 10 the subject of litigation and I don't believe the
13:53:00 11 Court has specifically ruled with regard to
13:53:04 12 deposition testimony.

13:53:07 13 **MR. DAVENPORT:** So I think on the safe side,
13:53:10 14 we should probably ask the questions. You can
13:53:11 15 object to it and then it will stricken from the
13:53:13 16 record.

13:53:14 17 **MS. HUGGINS:** Well, no. Here's the problem.
13:53:17 18 That says no public disclosure and that is a
13:53:20 19 lawsuit --

13:53:20 20 **MR. DAVENPORT:** For documents. It doesn't
13:53:22 21 say anything about deposition testimony. It also
13:53:24 22 doesn't say anything if you're involved -- Jim,
13:53:26 23 don't say anything.

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13:53:28 1 It doesn't say anything about if you are
13:53:30 2 named as a party in lawsuit. This is just talking
13:53:33 3 about general disclosure under Public Officers Law.
13:53:35 4 This is a lawsuit. You've been named in a lawsuit,
13:53:38 5 respectfully, sir.

13:53:39 6 So, you know, you can object to the
13:53:41 7 production of documents, I'm not -- I'm not asking
13:53:44 8 for any documents to be produced, but this does not
13:53:46 9 say anything about deposition testimony.

13:53:47 10 **MS. HUGGINS:** It says publicly disclosing
13:53:51 11 records --

13:53:52 12 **MR. DAVENPORT:** Documents.

13:53:53 13 **MS. HUGGINS:** Okay. The issue is that that
13:53:56 14 language is incredibly broad. I am fine if you ask
13:54:00 15 the questions. I'm not going to permit him to
13:54:02 16 answer them.

13:54:04 17 This is why I raised this earlier with you,
13:54:06 18 is that that -- if we run afoul of that, we are
13:54:18 19 subject to further suit by the PBA.

13:54:20 20 And I cannot put the city or this officer in
13:54:24 21 that position or myself in that position as a City
13:54:28 22 of Buffalo employee.

13:54:29 23 So I understand maybe you want to preserve

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13:54:31 1 the record by indicating what questions you wish to
13:54:34 2 ask, but my concern is him answering any of those
13:54:36 3 questions that may reveal the contents of records.

13:54:41 4 **MR. DAVENPORT:** Your concern is noted.

13:54:45 5 **MS. HUGGINS:** So in citing that order to
13:54:47 6 show cause, depending on what your question is, I
13:54:50 7 may instruct him not to answer it.

13:54:52 8 But it's only -- my concern is, is having --
13:54:56 9 having a verbal answer here inadvertently disclose
13:55:00 10 the contents of an investigation.

13:55:01 11 **MR. DAVENPORT:** Okay. Plaintiff preserves
13:55:03 12 his rights to be able to bring Mr. Santana back in
13:55:05 13 for a deposition to answer the questions that
13:55:07 14 counsel will, it seems --

13:55:07 15 **MS. HUGGINS:** And that's --

13:55:09 16 **MR. DAVENPORT:** -- object to.

13:55:10 17 **MS. HUGGINS:** And that's fine. On this
13:55:12 18 issue, specifically because of this order to show
13:55:15 19 cause, that is my concern.

13:55:16 20 **MR. DAVENPORT:** Okay. So I would just like
13:55:18 21 to say on the record that it says records. It does
13:55:22 22 not say anything about deposition testimony.

13:55:23 23 So plaintiff respectfully disagrees that

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13:55:27 1 this TRO has anything to do with this deposition
13:55:30 2 testimony here today.

13:55:30 3 And we will preserve that right to move
13:55:34 4 forward with asking Mr. Santana the questions that
13:55:37 5 we are about to ask in a further deposition.

13:55:40 6 **BY MR. DAVENPORT:**

13:55:41 7 **Q.** So Mr. Santana, are you aware of any
13:55:44 8 officers who were investigated or asked to provide
13:55:48 9 a statement as a witness by internal affairs for
13:55:50 10 this January 1st, 2017, incident?

13:55:52 11 **A.** No.

13:55:53 12 **Q.** Are you aware of the process that
13:56:02 13 internal affairs goes through for investigating
13:56:04 14 complaints against officers?

13:56:06 15 **A.** No.

13:56:07 16 **Q.** When you participated as a witness,
13:56:12 17 what was the outcome of that complaint?

13:56:15 18 **MS. HUGGINS:** Well, that, I am going to
13:56:17 19 object to. I don't know the answer to that
13:56:18 20 question, but you're saying what is the outcome of
13:56:21 21 the complaint. That could reveal --

13:56:23 22 **MR. DAVENPORT:** Because if it was
13:56:25 23 substantiated, then I would be able to ask him

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13:56:27 1 questions. This TRO has nothing to do with
13:56:30 2 substantiated complaints.

13:56:30 3 **MS. HUGGINS:** It says settled.

13:56:31 4 **MR. DAVENPORT:** Okay. Well, how do you
13:56:33 5 interpret settled?

13:56:34 6 **MS. HUGGINS:** I'm not interpreting settled.
13:56:37 7 In the labor context, settled is anything that --
13:56:40 8 settled is anything that is ranging from an other
13:56:44 9 disposition to a settled disposition.

13:56:49 10 **MR. DAVENPORT:** Okay. So what you're saying
13:56:50 11 is that if the outcome was not settled, then you're
13:56:55 12 going to object and direct Mr. Santana not to
13:56:57 13 answer?

13:56:58 14 **MS. HUGGINS:** The way that that is written
13:57:00 15 and --

13:57:01 16 **MR. DAVENPORT:** I have it if you need it.

13:57:02 17 **MS. HUGGINS:** I have it. Hang on.

13:57:04 18 **MR. DAVENPORT:** Okay. I'm reading this and
13:57:06 19 it says that: Disclosure is not allowed if there
13:57:09 20 is pending unsubstantiated, unfounded, exonerated,
13:57:13 21 or otherwise found not guilty. It doesn't say
13:57:16 22 anything about settled.

13:57:16 23 **MS. HUGGINS:** It is the --

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13:57:19 1 **MR. DAVENPORT:** Or regarding settlement
13:57:23 2 agreements.

13:57:23 3 **MS. HUGGINS:** It is on page 2, the middle
13:57:26 4 paragraph: It is further ordered that pending the
13:57:28 5 hearing schedule above for the preliminary
13:57:30 6 injunction, a temporary restraining order is hereby
13:57:32 7 issued restraining respondents and those acting in
13:57:35 8 concert with them from publicly disclosing any
13:57:38 9 records concerning unsubstantiated and pending
13:57:42 10 allegations or settlement agreements entered into
13:57:44 11 prior to June 12, 2020.

13:57:46 12 **MR. DAVENPORT:** I see nothing in there about
13:57:47 13 settled, so I'd just --

13:57:49 14 **MS. HUGGINS:** Settlement agreement.

13:57:50 15 **MR. DAVENPORT:** Well, you said settled and I
13:57:53 16 have no idea what settled means, but if I'm looking
13:57:55 17 at this and if what happens in this internal
13:57:59 18 affairs investigation was a finding of
13:58:03 19 substantiated, then there's nothing in this TRO
13:58:05 20 that would prevent Mr. Santana from talking about
13:58:07 21 it.

13:58:09 22 **MS. HUGGINS:** Respectfully, the TRO
13:58:11 23 restrains the City of Buffalo, its employees from

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13:58:15 1 publicly disclosing any records that would fall
13:58:17 2 into that.

13:58:19 3 Those concerns may not trouble you as a
13:58:22 4 nonlabor attorney who does not understand what
13:58:25 5 settlement agreement means, but I am telling you as
13:58:27 6 his attorney, out of an abundance of caution, I'm
13:58:31 7 going to object to the answer to that question
13:58:33 8 based upon this order to show cause.

13:58:34 9 I understand you may want to bring him back
13:58:37 10 once this litigation is completed and ask those
13:58:38 11 questions and that is different and we can address
13:58:40 12 that with the Court.

13:58:41 13 This is -- is very much an order from the
13:58:44 14 Court that I have concerns regarding.

13:58:47 15 **MR. DAVENPORT:** So does a settlement
13:58:48 16 agreement mean anything besides a lawsuit that is
13:58:52 17 put forth against an officer where it results in a
13:58:54 18 settlement agreement?

13:58:56 19 **MS. HUGGINS:** Lawsuit is different. We're
13:58:57 20 talking about internal affairs.

13:58:59 21 **MR. DAVENPORT:** Are there settlement
13:59:01 22 agreements for what internal affairs investigates?

13:59:03 23 **MS. HUGGINS:** My understanding is that there

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13:59:04 1 is.

13:59:05 2 **MR. DAVENPORT:** Okay. All right.

13:59:05 3 **MS. HUGGINS:** And that where is my concern
13:59:07 4 lies.

13:59:08 5 **MR. DAVENPORT:** All right.

13:59:08 6 **BY MR. DAVENPORT:**

13:59:09 7 **Q.** Well, I'm going to ask the question and
13:59:12 8 it sounds like Ms. Huggins will object to it. What
13:59:14 9 was the outcome of that other internal affairs
13:59:16 10 investigation?

13:59:17 11 **MS. HUGGINS:** And citing Judge Sedita's
13:59:19 12 order to show cause, I'm going to object to that
13:59:23 13 question and ask that the witness not answer it.

13:59:28 14 **BY MR. DAVENPORT:**

13:59:28 15 **Q.** As a witness, what sort of information
13:59:30 16 did you provide for that internal affairs
13:59:32 17 investigation?

13:59:34 18 **A.** Pretty much it's just --

13:59:35 19 **MS. HUGGINS:** Wait just a second. Can you
13:59:35 20 read that back to me?

13:59:35 21 (The above-requested question was then read
13:59:47 22 by the reporter.)

13:59:47 23 **MS. HUGGINS:** I'll allow that question to be

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13:59:54 1 asked and answered generally without revealing the
14:00:08 2 specifics of what may be contained in that
14:00:10 3 investigation citing this order to show cause.

14:00:16 4 **BY MR. DAVENPORT:**

14:00:16 5 **Q.** As a witness, what sort of information
14:00:18 6 were you required or did you provide as part of
14:00:21 7 this internal affairs investigation?

14:00:24 8 **A.** Generally what happened in relating to
14:00:27 9 that incident where I was involved in as a witness.

14:00:34 10 **Q.** Were you there present at the scene
14:00:36 11 when this incident took place that was the subject
14:00:37 12 of the internal affairs investigation?

14:00:39 13 **A.** Are you talking about this incident or
14:00:41 14 are you just talking about in general?

14:00:42 15 **Q.** Well, I'm talking about the previous
14:00:43 16 incident that you acted as a witness for.

14:00:46 17 **A.** Yes, I was.

14:00:47 18 **Q.** So you were present at the scene?

14:00:48 19 **A.** Yes. I was in the call log. It didn't
14:00:51 20 mean that I was present when the incident happened.
14:00:54 21 Somehow it could have been where I was involved in
14:00:56 22 a call and they called me in to see what my role
14:00:59 23 was within that call.

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14:01:00 1 **Q.** So is it your understanding that only
14:01:03 2 those officers who are involved on the call log are
14:01:06 3 asked to give a witness statement for internal
14:01:09 4 affairs investigations?

14:01:10 5 **A.** Everybody involved in that call whether
14:01:12 6 or not they were there or not.

14:01:15 7 **Q.** But if they're listed on the call log,
14:01:17 8 correct?

14:01:18 9 **A.** Yes.

14:01:18 10 **Q.** Okay. Because you weren't listed on
14:01:20 11 the call log for this incident that we're talking
14:01:22 12 about today.

14:01:23 13 **A.** No.

14:01:24 14 **Q.** Okay. So that's why you wouldn't be
14:01:26 15 expected to provide a statement as a witness for
14:01:28 16 this internal affairs investigation?

14:01:31 17 **MS. HUGGINS:** Form. You're asking him to
14:01:32 18 speculate why internal affairs would do something.

14:01:35 19 **MR. DAVENPORT:** No. He said that we --
14:01:38 20 witnesses -- witness statements are expected of
14:01:40 21 people who are on a call log, so I'm just merely
14:01:43 22 clarifying that the reason why he was not expected
14:01:45 23 to give a witness statement was because he was not

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14:01:48 1 listed on the call log. It's -- it's already
14:01:50 2 been --

14:01:51 3 **MS. HUGGINS:** Form. Form.

14:01:52 4 **MR. DAVENPORT:** Okay. All right.

14:01:53 5 **MS. HUGGINS:** Do you know why you didn't --
14:01:55 6 why you did or did not give a statement?

14:01:56 7 **MR. DAVENPORT:** That's not the question I
14:01:57 8 asked.

14:01:58 9 **BY MR. DAVENPORT:**

14:01:59 10 **Q.** My question is, is it because you were
14:02:01 11 not listed on the call log for this incident that
14:02:02 12 you were not asked to give a witness statement for
14:02:04 13 this incident that transpired on January 1st, 2017?

14:02:08 14 **MS. HUGGINS:** Form.

14:02:09 15 **THE WITNESS:** No, it's because I didn't see
14:02:11 16 the incident. That's why I wasn't called.

14:02:14 17 **BY MR. DAVENPORT:**

14:02:14 18 **Q.** Did they ask you if --

14:02:15 19 **A.** I wasn't there.

14:02:16 20 **Q.** -- you saw the incident?

14:02:18 21 **A.** No one ever asked me anything, but I
14:02:20 22 wasn't there and I didn't see the incident, so
14:02:22 23 that's why they didn't call me in.

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14:02:24 1 Q. Okay. Well, how do they know that you
14:02:27 2 didn't see the incident?

14:02:27 3 A. I don't know.

14:02:28 4 MS. HUGGINS: Form.

14:02:29 5 BY MR. DAVENPORT:

14:02:29 6 Q. They never asked you, though, right?

14:02:30 7 MS. HUGGINS: Form.

14:02:31 8 THE WITNESS: No, I never got notified to go
14:02:33 9 up to internal affairs, no.

14:02:35 10 BY MR. DAVENPORT:

14:02:35 11 Q. Did anybody besides somebody with
14:02:39 12 internal affairs ask you if you saw the incident?

14:02:41 13 A. No.

14:02:41 14 Q. So nobody ever asked you if you saw
14:02:43 15 what happened on January 1st of 2017 that's with
14:02:51 16 the City of Buffalo?

14:02:51 17 A. No one asked, no.

14:02:54 18 Q. But you yourself, you have never been
14:02:56 19 the target of an internal affairs investigation?

14:02:58 20 MS. HUGGINS: No. That, I'm going to object
14:02:59 21 to under this TRO.

14:03:03 22 MR. DAVENPORT: Okay. I'm just going to
14:03:04 23 preserve the record and our ability to ask that

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14:03:07 1 question.

14:03:07 2 **MS. HUGGINS:** That's understood and then I
14:03:10 3 expect that we will probably have a conference and
14:03:11 4 address it with the Court.

14:03:12 5 **MR. DAVENPORT:** I'm fine with that.

14:03:13 6 **MS. HUGGINS:** Yeah.

14:03:16 7 **BY MR. DAVENPORT:**

14:03:17 8 **Q.** Were you involved at all in the
14:03:18 9 criminal proceeding for Mr. Kistner?

14:03:21 10 **A.** No.

14:03:23 11 **Q.** Do you know the outcome --

14:03:25 12 **A.** No, I --

14:03:26 13 **Q.** -- of that criminal proceeding?

14:03:27 14 **A.** -- do not.

14:03:31 15 **MR. DAVENPORT:** All right. I think that's
14:03:31 16 all that I have.

14:03:36 17 (Discussion off the record.)

14:03:36 18 **The following was marked for Identification:**

19 **EXH. 37 Proposed Order to Show Cause**

14:04:15 20 **MR. DAVENPORT:** I think we're all set for
14:04:16 21 today.

14:04:17 22 (Deposition concluded at 2:04 p.m.)

23 * * *

1 I hereby CERTIFY that I have read the
2 foregoing 195 pages, and that except as to those
3 changes (if any) as set forth in an attached errata
4 sheet, they are a true and accurate transcript of
5 the testimony given by me in the above entitled
6 action on September 8, 2020.

7
8
9 -----
10 DAVID SANTANA
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23

1 STATE OF NEW YORK)

2 ss:

3 COUNTY OF ERIE)

4

5 I DO HEREBY CERTIFY as a Notary Public in and
6 for the State of New York, that I did attend and
7 report the foregoing deposition, which was taken
8 down by me in a verbatim manner by means of machine
9 shorthand. Further, that the deposition was then
10 reduced to writing in my presence and under my
11 direction. That the deposition was taken to be
12 used in the foregoing entitled action. That the
13 said deponent, before examination, was duly sworn
14 to testify to the truth, the whole truth and
15 nothing but the truth, relative to said action.

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RICHARD B. WHALEN, CM,
Notary Public.